

**DOCKET NO. 571728**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	
JENNIFER VILLARREAL	§	
D/B/A J & R CARWASH & DRIVE THRU	§	ALCOHOLIC
PERMIT NO(s). BQ617219	§	
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-3559)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 7<sup>th</sup> day of November 2008,  
the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Melissa M. Ricard. The hearing convened on August 6, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 6, 2008. The Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED** by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permit be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on December 4, 2008 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 7<sup>th</sup> day of November, 2008, at Austin, Texas



Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
Lark Branch Library, Study Room A  
2601 Lark Avenue  
McAllen, Texas 78504  
**VIA FACSIMILE TO: (361) 884-5427**

Ricardo Palacios  
**ATTORNEY FOR RESPONDENT**  
1317 East Quebec  
McAllen, TX 78503  
**VIA FACSIMILE TO: (956) 213-0256**

Jennifer Villarreal  
d/b/a J & R Carwash & Drive Thru  
**RESPONDENT**  
P.O. Box 932  
Pharr, TX 78577  
**VIA U.S. FIRST CLASS MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

McAllen District Office

SKP/aa

# State Office of Administrative Hearings

Cathleen Parsley  
Chief Administrative Law Judge

OC 14 2008

October 6, 2008

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**REGULAR MAIL**

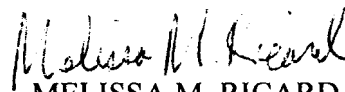
**RE: Docket No. 458-08-3559 / TEXAS ALCOHOLIC BEVERAGE COMMISSION  
vs. JENNIFER VILLARREAL d/b/a J & R CARWASH & DRIVE THRU**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,



MELISSA M. RICARD  
Administrative Law Judge

MMR/MAR

Enclosure

xc SANDRA PATTON, STAFF ATTORNEY, Texas Alcoholic Beverage Commission, 427 West 20<sup>th</sup> St. suite 600, Houston, Tx. 77008- **VIA INTERAGENCY MAIL**  
Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA MAIL INTERAGENCY MAIL**  
Ricardo Palacios, 1317 East Quebec, McAllen, Tx. 78503 -**VIA REGULAR MAIL**

**DOCKET NO. 458-08-3559**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	
<b>JENNIFER VILLARREAL D/B/A</b>	<b>§</b>	<b>OF</b>
<b>J &amp; R CARWASH &amp; DRIVE THRU</b>	<b>§</b>	
<b>PERMIT NO. BQ-617219</b>	<b>§</b>	
	<b>§</b>	
<b>HIDALGO COUNTY, TEXAS</b>	<b>§</b>	
<b>(TABC CASE NO. 571728)</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (TABC) brings this enforcement action against Jennifer Villarreal d/b/a J & R Carwash and Drive Thru (Respondent), alleging that Respondent (1) violated the Texas Alcoholic Beverage Code by allowing its agent, servant, or employee to be in possession of a narcotic on the licensed premises, and (2) conducted business at the licensed premises in a place or manner which warrants cancellation or suspension of Respondent's license based upon the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TABC requests that Respondent's license be canceled. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) recommends that Respondent's license be canceled.

**I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE**

There were no contested issues of notice or jurisdiction, and these matters are set out in the proposed findings of fact and conclusions of law without further discussion here. On August 6, 2008, a hearing convened before ALJ Melissa M. Ricard, at the McAllen Public Library, Lark Branch, 2601 Lark Avenue, Hidalgo County, Texas. TABC was represented at the hearing by

Sandra Patton, staff attorney. Respondent was represented by Ricardo Palacios. The hearing concluded and the record closed that same day.

## II. DISCUSSION

### A. Applicable Law

State law allows TABC to revoke a license for numerous reasons. TABC relies on two separate grounds in this case. Specifically, TEX. ALCO. BEV. CODE § 61.71 provides, in pertinent part:

- (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:
  - (1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;
  - (17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;

TABC rules further address what types of situations warrant suspension or cancellation of a license "based on the general welfare, health, peace, morals, safety, and sense of decency of the people." Specifically, in relevant part, 16 TEX. ADMIN. CODE § 35.41(b) provides that certain drug-related offenses (including possession of narcotics) will justify cancellation of a license if they are committed "by any person on the licensee or permittee's licensed premises" and "the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense."

Finally, Texas law clearly prohibits employees of licensees from engaging in or permitting lewd conduct, which includes “possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.” TEX. ALCO. BEV. CODE ANN. § 104.01(9).

Relying upon these provisions, TABC brings this enforcement action against Respondent, arguing that its license should be cancelled because (1) its employee and others possessed narcotics while on the premises, thus violating the Code, and (2) the possession of narcotics by the Respondent’s employee and by others on Respondent’s licensed premises, along with the sale of such narcotics on the premises, shows the establishment is being operated in a manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people. The relevant factual and legal issues are addressed below.

#### **B. TABC’s Evidence and Arguments**

Respondent operates an establishment located at 408 N I Road, ‘B’, Pharr, Texas (the establishment). The establishment is operated under the authority of Beer Retail Off Premise License No. BQ-617219 issued by the TABC (the establishment).

TABC presented the testimony of Ramon Tovias, Special Crimes Investigator with the City of Pharr Police Department. Officer Tovias stated that in July of 2007, the Pharr Police Department had received a crime stoppers tip that drugs were being sold at the establishment. An investigation was commenced and two undercover drug buys were conducted as a part of the investigation.

On July 20, 2007, the Pharr Police Department conducted an undercover drug buy at the establishment. A confidential informant was given \$20. Pharr police officers observed the informant purchase a half gram of cocaine from the clerk of the establishment, Jesus Aguilar. Mr. Aguilera was the only employee at the establishment at the time. A field test showed the narcotic

tested positive for cocaine and the sample was forwarded to the Texas Department of Public Safety (DPS) Crime Laboratory for further analysis. Officer Tovias did not participate in this transaction, but reviewed the police report by Pharr Police Department Officer Ramon as a part of his investigation.

On July 27, 2007, a second undercover drug buy was conducted, which was observed by Officer Tovias. A confidential informant was again given \$20 to purchase drugs. The informant drove through the drive thru of the establishment and purchased two baggies of drugs from the only clerk on duty at the time, who was later identified as Richard Bocanegra. The narcotics field tested positive for cocaine and were forward to DPS for further testing.

Felony arrest warrants were issued for Mr. Aguilera and Mr. Bocanegra. On August 24, 2008, the warrants were served at the establishment. Surveillance of the establishment was set up by the police department. Mr. Aguilera was observed going in and out the establishment that day and appeared to the police as the only employee present. When the police officers proceeded to serve the warrants, Mr. Aguilera was sitting on a bench in the front of the establishment. Mr. Bocanegra drove up in a vehicle which he parked on the west side of the establishment; about 25-40 feet from the building, where the vehicles exit the drive thru and cars get washed. Officer Tovias approached Mr. Bocanegra as he got out of the vehicle. Both men where placed under arrest.

Mr. Bocanegra was asked for his driver's license and insurance, which he did not produce. In accordance with the policy of the Pharr Police Department, the vehicle was impounded because the driver could not provide proof of insurance and a valid Texas driver's license. When the vehicle was inventoried, several baggies (21 grams) of cocaine, a small amount of marijuana and \$2300 in cash were found. The narcotics field tested positive for cocaine, and sent to DPS for further analysis.

Through his investigation, Officer Tovias determined that Mr. Aguilera was an employee of the establishment, and Mr. Bocanegra was the boyfriend of the Respondent. During the surveillance

of the establishment, Mr. Aguilera and Mr. Bocanegra were the only individuals operating and managing the establishment, which was open for business.

TABC submitted three drug analysis reports into evidence, each of which showed that the substance tested was cocaine. TABC also submitted the Judgment of Conviction ordered by Hon. Homer Salinas, 92<sup>nd</sup> District Court of Hidalgo County, Texas which showed that on April 2, 2008, Ricardo Gonzalez Bocanegra pled guilty to the offense of possession with intent to deliver cocaine, a first degree felony. The date of offense for the conviction was August 24, 2007.

Based upon the testimony and documentation offered, TABC asserts there is ample evidence to show that the establishment has been operated in a place or manner that is not consistent with the general welfare, health, peace, morals, safety, and sense of decency of the people.

### **C. Respondent's Evidence and Arguments**

Respondent testified that she is the owner of the establishment and she has closed the store. In July and August of 2003, she had "two or three" employees: Mr. Aguilera, Solomon Robles, Ricardo Ramirez and a female named Luna, but she could not recall this employee's last name. Mr. Bocanegra is now her husband. She denied any knowledge that drugs were being sold on the premises. When asked how she verifies what goes on at the establishment when she is not present, Respondent stated that she has friends and customers that frequent the store and keep her apprised of what goes on there. She trains her employees herself and they attend TABC permit training. She claims she was there on August 24, 2007, when Mr. Bocanegra was arrested for at least two hours and also on one of the days when undercover drug buys was made, but she does not know which one. She has terminated Mr. Aguilera's employment. She stated that she believed that the case against Mr. Bocanegra stemming from the August 24, 2007 arrest was dismissed.



**D. The ALJ's Analysis**

After considering the totality of the evidence, the ALJ concludes that TABC has shown that the place or manner in which the establishment has been operated is not consistent with the general welfare, health, peace, morals, safety, and sense of decency of the people. Therefore, the ALJ recommends that Respondent's license be canceled.

The applicable legal standard does not require actual knowledge or involvement by Respondent. Rather, a license can be canceled if the use, sale or possession of drugs occurs on the licensed premises "by any person" if "the licensee or permittee . . . in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense."<sup>1</sup> Moreover, the statute that allows a license to be canceled if the licensee "conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people" does not require an element of actual criminal wrongdoing by the licensee.<sup>2</sup> Rather, it is sufficient if the manner or place in which the business is conducted is not consistent with the general welfare, peace, and safety of the community.

In this case, TABC has proven three separate incidences over a period of a month where narcotics were found on the premises. Respondent argues that she did not know about the drugs, and claims that she was there on at least two of the occasions. However, Officer Tovas states she was not there. As evidence that she exercised reasonable care, Respondent offers friends and customers who tell her what is going on as her only effort to manage the employees and to keep herself apprised of what goes on there. Respondent's boyfriend sold drugs on the premises and was found with a large amount of narcotics when he was arrested. Her employee sold drugs on the premises on another occasion as well. Respondent mistakenly testified that Mr. Bocanegra's criminal

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<sup>1</sup> 16 TEX. ADMIN. CODE § 35.41 (emphasis added).

<sup>2</sup> TEX. ALCO. BEV. CODE § 61.71(a)(17).

case was dismissed, when in actuality he pled guilty. Respondent failed to keep herself apprised about what was happening at the establishment, and continues to fail to understand the serious consequences that have resulted from what has taken place there. Taken as a whole, the ALJ is persuaded that the place or manner in which the establishment is operated presents a danger to the general welfare, peace, and safety of the community.

In light of all of the evidence discussed above, the ALJ concludes that Respondent either knew or should have known that illegal drug trafficking and possession were occurring on the licensed premises. At a minimum, Respondent knew or should have known of the likelihood of its occurrence and failed to take reasonable steps to prevent it. That, coupled with the actual existence of illegal drugs on the property on July 20 and 27, and August 24, 2007, persuades the ALJ that the place or manner in which the establishment has been operated warrants cancellation of Respondent's license based on the general welfare, health, peace, morals, safety, and sense of decency of the people. Accordingly, the ALJ recommends that Respondent's license be canceled. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

### **III. FINDINGS OF FACT**

Jennifer Villarreal (Respondent) operates an establishment located at 408 N I Road, 'B', Pharr, Texas (the establishment). The establishment is operated under the authority of Beer Retail Off Premise License No. BQ-617219 issued by the TABC.

2. On July 20, 2007, Officer Ramon of the Pharr Police Department conducted an undercover investigation wherein a confidential informant was given \$20. The informant entered the premises and purchased a half gram of cocaine from Jesus Aguilera, the employee on duty at the time.
3. On July 27, 2007, Officer Ramon Tovias of the Pharr Police Department conducted an undercover investigation wherein a confidential informant was again given \$20. The individual entered the premises and purchased a half gram of cocaine from Ricardo Bocanegra who was the only person in the establishment at the time.
4. On August 24, 2007, Officer Tovias arrived at the establishment to serve felony arrest warrants for Mr. Aguilera and Mr. Bocanegra.